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# THE LEGAL STATUS OF MARRIED WOMEN TEACHERS

PAMPHLET NO. 47

By

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*Specialist in School Legislation, Office of Education*

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## I. GENERAL PROBLEMS AND LEGAL PRINCIPLES

*The problem and scope of study.*—The sentiment for the participation of women in public affairs had its early development both in England and in this country in connection with the education of youth, for which they had certain manifest capacities. The growth of this sentiment has continued with ever-widening and ever-increasing influence. Today women constitute approximately 86 percent of all the teachers in public elementary and secondary schools of the United States.

The dismissal and exclusion of women from public service on account of their marriage has received considerable attention in the case of public-school teachers. Recent years have been accompanied by many sharp controversies over the legal rights of women teachers who marry. The following are typical of some of the questions involved:

(a) May a school board dismiss a woman teacher solely on the ground that she married sometime during the period of her employment?

(b) May a school board employ a teacher on condition that she will remain unmarried during the period of her employment?

(c) Are teachers' contracts in restraint of marriage valid?

(d) May school boards refuse to employ women teachers solely on the ground that they are married?

(e) Where a statute specifies the causes for dismissal of a teacher and omits marriage as a cause, or where it authorizes dismissal for "cause" or "good cause" is it within the statute to dismiss on account of marriage?

(f) Is it a discrimination on account of sex for a school board to dismiss a woman teacher on the ground of marriage, or to refuse her employment on that ground?

A number of questions as above indicated have been carried to the highest State courts for determination. The courts generally have given careful consideration to the questions

before them. Questions pertaining to the rights of women teachers who marry have arisen under varying statutory provisions, local regulations or practices, and circumstances, and the conclusions arrived at by the courts are not altogether in agreement. Each case must be considered in the light of the different factors and circumstances. In general, it may be said that the courts in dealing with these cases have sustained the philosophy of modern education which tends toward the liberation of personality.

The Office of Education in many instances is called upon to furnish information concerning the legal status of women teachers who marry. The purpose of this pamphlet is to make available to superintendents, school boards, teachers, and others information pertaining to the legal principles involved in the dismissal of women teachers on account of marriage.

This publication is limited to a statement of facts relating to significant cases and the legal principles involved. No arguments are made for or against the employment or dismissal of married women teachers; nor is any attempt made to prove or disprove the soundness of any judicial conclusion and opinion quoted or cited. The legal status of married women teachers is to be sought for in statutes, court decisions, and the opinions of appropriate State officials. The data in this study are derived primarily from decisions of State supreme courts.

## Common-Law Principles Pertaining to the Dismissal of Teachers in General

*Judicial review of dismissal.*—The power to dismiss teachers, whether men or women, is generally expressed and regulated by statutes, which usually differ in the various States. As a rule where the statutes prescribe the conditions upon which dismissal may be made they must be strictly followed. Where the statutes are silent concerning the removal of teachers their dismissal is generally subject to the power of those who have the power to employ them.[1] However, the power to discharge teachers must as a rule be exercised in accordance with the general principles of law governing contracts.[2] In the case of *School District* v. *Hale*

[1] *Carver* v. *School District*, 113 Mich. 524, 71 N.W. 859.
[2] *School District* v. *Hale*, 25 Pac. 308.

the Supreme Court of Colorado in 1890 held void a rule in the teachers' handbook to the effect that the tenure of office of teachers regardless of contract is at the pleasure of the board. In this case the court said:

> The power of employment and discharge of teachers is not in terms beyond the control of the general law. . . . Our whole judicial system is at variance with the idea that, in the absence of specific mandatory, legislative restrictions, the courts must not be appealed to, to determine the rights of contracts between citizens, or between citizens and corporate bodies which the statutes have created.

In 1904 the Supreme Court of Idaho discussed the authority of school boards to dismiss teachers as follows:

> After an examination of the various authorities . . . we conclude that the general principle running through them all is that, where the power to remove is restricted or limited [by statute] to certain reasons or causes, the final determination as to whether the case falls within any of those causes rests with the courts, and may be reviewed or inquired into by them, and that, on the other hand, where the power [to dismiss] is general, unlimited, and unrestricted, and is once exercised, it cannot and will not be questioned or examined into by the courts (*Edwin* v. *Independent School District*, 77 Pac. 222).

In the case of *School City of Elwood* v. *State*, *infra*, the Supreme Court of Indiana in 1932 summarized as follows:

> If a school board dismisses a teacher for a cause named in the statute, such action is conclusive and is not subject to review by the courts, unless the board in taking the action acted in bad faith, arbitrarily, corruptly, fraudulently, or in gross abuse of its discretion. *Greathouse* v. *Board*, etc. (1926) 198 Ind. 95, 151 N.E. 411; *Keener School tp.* v. *Eudaly* (Ind. App. 1931) 175 N.E. 363; ——. Where the statute specifically enumerates the causes for which a teacher may be removed or dismissed, the teacher cannot be removed or dismissed for any other cause, *Kennedy* v. *San Francisco Bd. of Education* (1890) 82 Cal. 483, 22 P. 1042; *Butcher* v. *Charles* (1895) 95 Tenn. 532, 32 S.W. 631, and, where the school board in removing or dismissing the teacher acted outside of its jurisdiction or power under the statute, the action of the board is not final, but is subject to review of the courts, *Courtright* v. *Mapleton* (1927) 203 Iowa 26, 212 N.W. 368; *Custer* v. *School District* of . . . (1899) 12 Pa. Super. Ct. 102.

## General Principles Governing the Dismissal of Teachers on Account of Marriage

In a few States it appears that the statutes permit school boards to dismiss teachers without specification of cause or procedure.[3] In such States it is generally held that school

[3] Anderson, E. W. The teacher's contract and other legal phases of teacher status. Teachers College, Columbia University, Contributions to Education No. 246, 1927, p. 111.

boards may dismiss teachers whenever in their judgment public necessity or convenience requires it. This gives school boards a rather wide leeway. However, most jurisdictions do not confer upon school boards such wide statutory discretion with respect to dismissal of teachers. It is quite customary to specify cause or causes for dismissal and also the procedure. Where dismissal for cause is authorized, it is contrasted with dismissal at pleasure. In *Clark* v. *School District* the Supreme Court of North Dakota said:

> The term "cause" as used in (statute) providing that the board of education shall have power to dismiss for "cause" refers to a real cause affecting the interests of the school as distinguished from removal at the pleasure of the school board (7 N.D. 297).

Where statutory and regulatory provisions are silent on the subject, the weight of authority is in support of the principle of the general freedom of contract between school boards and teachers (*Sheldon* v. *School Committee of Hopedale*, 177 N.E. 94, Mass. 1931). Where State law specifies causes for dismissal, local and administrative school units are without authority to enlarge upon the causes for dismissal or to change the manner in which dismissal can be brought about. In regard to marriage as an additional cause for dismissal it has been held that rules adopted by a board of education cannot control the provisions of the statute and are immaterial in determining the statutory rights of the teacher (*Kate Kennedy* v. *Bd. of Ed.*, 82 Cal. 483; *People ex rel Pixotto* v. *Bd. of Ed.*, 144 N.Y.S. 87; *Blair* v. *U.S.*, 45 D.C.App. 353; *Thompson* v. *Gibbs*, 97 Tenn. 489; *Jameson* v. *Bd. of Ed.*, 81 N.E. 1126, 74 W.Va. 389, 1914; *Richards* v. *Sch. Dist.*, 78 Oreg. 623). "Where the legislature enumerates certain causes for dismissal of teachers, the courts regard such enumeration as exhaustive."[4]

Where procedure for the dismissal of teachers is embodied in statutory provisions they must be substantially complied with. The courts are generally agreed that a teacher cannot be removed on any other grounds or in any other manner than as provided by statute. (See *Murphy* v. *Maxwell* (N.Y.),

[4] Edwards, I. N. Marriage as a legal cause for dismissal of women teachers, The Elementary School Journal, 25; 692–695, May 1925.

p.[5] 6; *Jameson* v. *Board of Education* (W.Va.), p. 7; *Blair* v. *U.S.* (D.C.), p. 9; *State* v. *Milwaukee* (Wis.), p. 10; *School City of Elwood* v. *State* (Ind.), p. 14.)

It has been held that the mere fact that a female teacher is married is not a reasonable or sufficient ground to warrant her dismissal. (See *Jameson* v. *Board of Education* (W.Va.), p. 7; *Richards* v. *District School Board* (Oreg.), p. 7; *School City of Elwood* v. *State* (Ind.), p. 14. For a contrary holding, see *Sheldon* v. *School of Hopedale* (Mass.), p. 13.)

Courts as a rule are disinclined to interfere with the exercise of discretionary authority vested in school boards, unless abuse of such authority is clearly shown. In the absence of a statute or a State regulation to the contrary, it is generally held that school boards may, in their discretion, refuse to employ married women teachers.

There is division of judicial opinion whether a clause in a teacher's contract in restraint of marriage is a valid part of the contract. The decisions of the Supreme Courts of Indiana and Wisconsin tend to support such restrictions (see pp. 6, 11), while in New York a teacher's contract in restraint of marriage was held void because contrary to public policy. (See *Murphy* v. *Maxwell*, p. 6; *Backie* v. *Cromwell*, p. 15.)

North Carolina appears to be the only State having a statutory provision specifically affecting the employment of married women teachers. In 1933 the legislature of North Carolina stipulated that "in the employment of teachers no rule shall be made or enforced on the ground of marriage or nonmarriage." (See administrative rulings for Maryland and North Dakota, pp. 16 and 18.)

## II. COURT DECISIONS RELATING TO THE DISMISSAL OF MARRIED WOMEN TEACHERS

Following is a summary of State supreme court decisions relating to the dismissal of married women teachers, and the principal holdings of the courts. The cases are presented in the order in which they were rendered.

[5] Page references are to sections in this pamphlet.

## INDIANA

*Guildford School Township* v. *Roberts:* 62 N.E. 711 (1902)

Among the earliest cases specifically relating to the legal status of women teachers is the case of *Guildford School Township* v. *Roberts.* In this case the teacher in applying for a position told the school trustee that she was not married and did not intend to marry during the school year. The trustee informed her that he would not employ a married woman. She signed the contract in her maiden name when, as a matter of fact, she had been married 4 days. When the trustee learned of her real status he discharged her. In an action against the school township for a breach of contract the Supreme Court of Indiana ruled that the contract was void on the ground that it was secured through fraud and misrepresentation. The court also held that a condition in a teacher's contract that the teacher will remain unmarried during the school term was a valid part of the contract, and that a contract secured upon such conditions may be rescinded for failure to perform said condition.[6]

## NEW YORK

*Murphy* v. *Maxwell:* 177 N.Y. 494, 69 N.E. 1092 (Court of Appeals of New York), 1904

This case arose from an application for a mandamus to compel the city superintendent to recognize the complainant as teacher. The teacher had been dismissed on account of marriage, under a bylaw of the board of education of the city of Brooklyn, which provided "Should a female principal, head of department or teacher marry, her place shall thereupon become vacant, but her marriage shall not operate as a bar to her reappointment, should it be deemed to the best interest of the school to retain her services." Upon consolidation of the city of Brooklyn with the city of New York this rule was continued. Section 1117 of the Greater New York charter provided that all teachers in the public schools shall continue to hold their positions subject only to the limitations of the statute and to removal for cause, and section

[6] The second part of this ruling is not in accord with the great weigh of judicial authority which supports the principle that contracts in general restraint of marriage are void because they are contrary to public policy and also to the principle that an illegal school-board ruling cannot become a valid part of a contract (*Murphy* v. *Maxwell*).

1114 stipulated that charges may be preferred against a teacher for "gross misconduct, insubordination, neglect of duty, or general inefficiency", and provided for the trial of such charges and the manner of conducting the trial. The Court of Appeals of the State of New York held that these provisions were exclusive, that a teacher could not be removed on any other ground or in any other manner than as provided by statute, and that a bylaw of the board of education which provided that if a female teacher married her place should thereupon become vacant was in conflict with the charter and void.

The New York Court of Appeals in this case found it unnecessary to consider the reasonableness of the bylaw; it found that the bylaw conflicted with the charter and to this extent it was inoperative.[7]

WEST VIRGINIA

*Jameson* v. *Board of Education of Union District:* 81 N.E. 1126, 1914 (W.Va.); 74 W.Va. 389

This is an action for salary of a female teacher dismissed on account of marriage.

The Supreme Court of West Virginia held in this case that marriage of a female teacher is not of itself ground for revocation or abrogation by the school board of its contract with the teacher. The court said:

> The only grounds of removal prescribed by section 58, chapter 45, serial section 2099, Code 1913, are "incompetency, neglect of duty, intemperance, profanity, cruelty or immorality." Marriage is not covered by any of these, and therefore does not constitute in and of itself ground of removal. . . . As marriage is not a ground of removal under the statute of this State, the action of the board in removing plaintiff, or in revoking or attempting to revoke its action is unfounded.

OREGON

*Richards* v. *District School Board:* 153 Pac. 482; (Dec. 1915)

This case arose by petition for a mandamus to compel the school board to reinstate a woman teacher dismissed on

[7] The opinions of the lower courts in this case are reported in 79 N.Y. Supp. 174 (1902), and in 83 N.Y. Supp. 1098, 87 App. Div. (1903). In the former of the lower decisions it was held that the dismissal of a teacher on the ground of marriage could not be justified on the ground that the bylaw was a part of the contract and it was said that to hold that an unauthorized bylaw was an essential part of the contract of the teacher would be, in effect, to hold that all the provisions of the charter might be nullified by the enactment of a bylaw no matter how inconsistent with the charter it might be.

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account of marriage. The teacher was employed in September 1911, while single, and had been reelected in 1912 and 1913 and was placed on the list of permanently employed teachers as directed by chapter 37 of the laws of 1913. In 1913 the school board notified the teacher that she had been reelected and advised her that the board had ruled that "all women teachers who marry while in the service . . . thereby terminate their service . . . but such marriage shall not operate to bar them from reappointment should it be deemed by the board to be to the best interest of the school to retain their service . . . If you accept the position . . . as herein noted, please fill in the blanks on, and sign the enclosed accepted form." The accepted form at the close of the letter read as follows: "I accept the position above named and defined on the conditions specified." The teacher signed this form. On January 5, 1915, she received oral notice that she was dismissed because she had married on the preceding day. No formal charges were made or a hearing held as were required by statute.

The court held in this case that "the mere fact of marriage is not alone sufficient to warrant the discharge of a teacher" and that a "mandamus is available as a remedy." The court gave careful consideration to the question involved. Its opinion was fully and vigorously expressed. The following are excerpts from the opinion:

> It is plain that the statute contemplates that the complaint or criticism or charge shall present some good cause or some reasonable cause for dismissal. If the board can dismiss for any cause, whether it be reasonable, capricious, or whimsical, then a hearing would be an idle ceremony.
>
> . . . Marriage either does or does not furnish a reasonable cause. If it is not a reasonable cause, then the board was utterly powerless to dismiss, because their authority is limited to the cases with the purview of the statute, and the law contemplates dismissal for reasonable cause only. . . . If the act of marriage is alone a reasonable cause, then the attempted dismissal was ineffective because no written complaint was filed and the plaintiff was not furnished with a written notice, stating the reason for the proposed dismissal, and she did not receive a copy of any charge. The attempted dismissal was void in any event. If marriage is not a reasonable cause, the dismissal was ineffective because the board was without any power to discharge for an unreasonable cause; if marriage is a good cause, the summary act of the board was of no effect because the power to dismiss was not exercised in the manner provided by law.

. . . If a teacher becomes inefficient or fails to perform a duty, or does some act which of itself impairs usefulness, then a good or reasonable cause for dismissal would exist. The act of marriage, however, does not, of itself, furnish a reasonable cause. That the marriage status does not necessarily impair the competency of all women teachers is conceded by the school authorities when they employ married women, as they are even now doing, to teach in the schools of this district. The clerk of the board admitted that in some instances a woman becomes a better teacher after marriage than she was before. The reason advanced for the rule adopted by the board is that after marriage a woman may devote her time and attention to her home rather than to her schoolwork. It would be just as reasonable to adopt a rule that if a woman teacher joined a church it would work an automatic dismissal from the schools on an imagined assumption that the church might engross her time, thought, and attention to the detriment of the schools; but such a regulation as the one supposed would not even have the semblance of reason. It must be conceded that quite a different case is presented where the act ruled against is inherently wrong. The act to which the instant rule relates does not involve a single element of wrong, but, on the contrary, marriage is not only protected by both the written and unwritten law, but it is also fostered by a sound public policy. It is impossible to know in advance whether the efficiency of any person will become impaired because of marriage, and a rule which assumes that all persons do become less competent because of marriage is unreasonable because such a regulation is purely arbitrary. If a teacher is just as competent and efficient after marriage, a dismissal because of marriage would be capricious. If a teacher is neglectful, incompetent, and inefficient, she ought to be discharged whether she is married or whether she is single.

## DISTRICT OF COLUMBIA

*Blair* v. *United States ex rel. Hellman:* 45 District of Columbia Appeals, 353, 1916

This is a petition for mandamus to compel the Board of Education of the District of Columbia to restore a married woman to teaching. The teacher was employed in 1911 while single. In July 1914, she married and in September of that year notified the Board of Education by letter of her marriage and requested that rule 45 be reconsidered or amended in order that it might constitute no bar to the continuation of her position as teacher. Rule 45 was as follows:

Should a female teacher marry, her place shall become vacant, provided, however, that when the marriage does not take place until after the last regular school day in June, she shall be paid her full salary for the month of June.

In granting a mandamus on behalf of the teacher in this case the court said:

> If a teacher becomes inefficient or fails to perform a duty, or does some act which of itself impairs usefulness, then a good or reasonable cause for dismissal would exist. It is, however, unnecessary to pass upon the reasonableness or unreasonableness of rule 45, because in the view that we have taken the statute provides that teachers shall be dismissed upon the recommendation of the superintendent of schools. Inasmuch as rule 45 provides for the automatic dismissal of teachers without respect to the procedure provided in the statute, it is in that respect inconsistent with the statute, and therefore void.

The view taken in this case was sustained by the Court of Appeals in New York in a case under an analogous statute and a similar rule: *People ex rel. Murphy* v. *Maxwell*, 177 N.Y. 494, 69 N.E. 1092.

WISCONSIN

*State* v. *Board of School Directors of City of Milwaukee:* 191 N.W. 746, 1923

This was an application for a mandamus by the State on behalf of Thompson, a married woman teacher. The teacher was employed in 1914 while single. She taught continuously until she was dismissed in 1921. In January 1921 the school board ruled that:

> Married women teachers shall not be transferred, promoted, or permanently appointed to regular teaching positions except in clearly attested cases where the teacher becomes the sole support of a family by reason of the death or incapacity of the husband and that married teacher shall be known by her married name on all school records and printed matter.

The teacher in this case was married in March 1921, and made no report of her marriage at that time and signed the pay roll in her maiden name during the remaining school term. Prior to the commencement of the school work in September of that year she reported the fact of her marriage to the school officials, whereupon she was suspended from service upon the following reasons:

> The ground for your suspension is that you repeatedly signed your former maiden name to the school records during the second semester of the last school year in violation of the board's proceedings in this regard.

The court found in this case that the only rule governing the subject of causes for dismissal of teachers was article XVII, which is as follows:

The committee on complaints shall hear all charges against teachers and janitors and shall, subject to the approval of the board, dismiss teachers and janitors by majority vote for misconduct, incompetency, inefficiency, or inattention to duty.

The court held that the cause for dismissal in this case was not among the causes mentioned.

Such a dismissal cannot be at the mere pleasure of the board . . .
. . . We feel constrained to hold that the facts as presented in this record will not and do not support a finding that there was either misconduct or inattention to duty by the relator (teacher) such as warranted the severe penalty inflicted by the determination of the school board in this particular instance.

*Ansorge* v. *City of Green Bay:* 224 N.W. 119, 1929

In April 1925, the complainant was employed as teacher. Prior thereto the school board had adopted an unwritten rule against the hiring of married women as teachers. The director of the board of industrial education knowing that the teacher in this particular case contemplated marriage, inserted in the contract as follows:

It is agreed that the contemplated marriage of the party of the second part shall not be performed before the Christmas holidays. If performed at that time the party of the second part agrees to give thirty days' notice to that effect. If not performed at that time, the party of the second part agrees that she shall not be married until the close of the school year.

On January 20, 1926, she married, and on January 26, she was notified by the said director that her services were no longer required. This act by the director was sustained by the school board. The teacher brought action for salary for the remainder of the school year. In this case the Supreme Court of Wisconsin sustained the right of the school board to dismiss, and denied the said teacher salary for the remainder of the school year. Below are excerpts from this decision:

The rule is clearly laid down in 24 R.C.L. p. 612, where it is said: "Teachers and other administrative officers of the public-school system are normally subject to selection, dismissal, and control at the hands of the district school directors, who may make and enforce any reasonable rules and regulations in this connection, and in the absence of statutes to the contrary, may designate certain prerequisite qualifications of teachers, as for instance that only men shall be eligible for certain positions."

In 24 R.C.L. p. 614, it is said: "Rules and regulations adopted by a board prior to the making of a contract of employment with a teacher, which are known or ought to be known to the teacher when he enters into the contract, form part of the contract, and the teacher's employment is subject thereto."

In 24 R.C.L. p. 618, it is said: "The right to hire teachers and other school officials presupposes the right to dismiss them, and both of these powers are generally in the local school boards."

In the selection of teachers a board like the one herein of necessity must be and ordinarily is clothed with a broad power of discretion. It may be conceded that a married teacher can ordinarily perform her duties as satisfactorily as an unmarried one, but the board is charged with a duty which requires it to promote the public interests. On a policy such as is manifested in the instant case there may be a wide difference of opinion. Many circumstances may exist with reference to a particular school which might lead to the belief that a male teacher would be more suitable for employment than a female teacher. On the other hand, the same may be said with respect to married and unmarried teachers. In the employment of teachers the board must be and ordinarily is vested, as is heretofore said, with a wide discretion, and when such discretion is exercised in good faith and is not contrary to law, the exercise of such discretion should not be interfered with or controlled by the courts.

The action of the board does not contravene the provisions of section 6.015 of the statutes, which section recognizes the freedom of women to contract the same as men. Such section, as far as it is pertinent to the instant case, refers only to the right of a woman to enter into a contract, and does not restrict the board in the employment of either men or women in accordance with its views.

This Wisconsin decision was in 1929 and it is noteworthy that the N.W. Reporter, in which the above case appears, contains no reference to the Wisconsin decision of 1923, in the case of *State* v. *Bd. of School Directors of Milwaukee*, 191 N.W. 746 *supra*.

NEBRASKA

*Baker* v. *School District:* 233 N.W. 897, 1931

The teacher in this case had been employed for 9 months. During Christmas vacation she was married. Thereafter the school board advised her by letter that "after carefully considering all, we believe it would be more satisfactory to all concerned if you would hand in your resignation." As a result of this letter and conversation with the school director she was induced to resign, saying "all right." She went to the school and got her belongings and surrendered the school key. Later she sued for salary for the remaining

5 months of the school term. During the said 5 months she made no objection to the course pursued by the school district. The Supreme Court of Nebraska denied the teacher the right to salary during the remaining 5 months of her contract, and held that the contract between the school board and the teacher was abandoned by concurrence of the parties thereto. The court said:

> Considering the testimony . . . there can be but one conclusion arrived at, and that is, that the contract here involved was abandoned by mutual consent of the contracting parties.
>
> Where a contract is entered into and thereafter each party thereto performs acts inconsistent with its existence, but in each instance the inconsistent act of the one party is acquiesced in by the other, such contract will be treated as abandoned by mutual consent.

MASSACHUSETTS

*Sheldon* v. *Committee of Hopedale:* 177 N.E. 94, 1931

In 1922 the school committee of Hopedale employed the petitioner, who was then unmarried, as teacher in the public school. The said teacher was reemployed in the 3 years following, and by virtue of a statute thereby was employed thereafter to serve "at the discretion of the school committee" subject to the provisions of law regarding termination of employment. She continued in service until October 1930, rendering "constant and competent service and being of good moral character."

In September 1930 the school committee advised the teacher by letter that her dismissal was proposed for the reason that the committee believed it for the best interest of the school to limit the employment of female teachers to those who are unmarried, and that it had voted to "eliminate married female teachers from the teaching force. Your marriage conflicts with this established rule." The teacher was dismissed for the reason above stated, and thereupon petitioned for a mandamus to compel the school committee to reinstate her as teacher. The Supreme Court of Massachusetts, in upholding the school committee, adhered closely to the Massachusetts statutes and decisions, stating in part as follows:

> It is manifest that the broad power of dismissal as it had existed at least since 1844 was not confined further than by the express limitations imposed in 1914 and 1921. If they are complied with, the dismissal

rests as fully as ever it did in the discretion of the committee. The teacher is notified of what it is proposed to do. He is given at least 30 days to consider his own course of action. He shall be heard if he desires. . . . He has the chance of a recommendation from the superintendent that he be retained [teacher was so recommended in this case]. Nevertheless, faithful service, good morals, ability in his profession, on his part, are not conditions upon the powers of the committee. If in its judgment the welfare of the schools so requires . . . it decides to dismiss, the dismissal is valid. . . .

. . . Decisions elsewhere are not controlling. No decision of this court supports the contention of the petitioner.

## INDIANA

*School City of Elwood* v. *State:* 180 N.E., 471, March 1932

This is an action in mandamus by a teacher to compel the school trustees to restore her to teaching. She alleged to be a permanent teacher and possessor of an indefinite contract. In February 1931 the school trustees ruled that in the future no married women should be employed. The reason for her dismissal was solely on the ground that she "was a married woman teacher." The statute of Indiana provides that cancelation of an indefinite contract of a permanent teacher may be made for "incompetence", "insubordination", "neglect of duty", "immorality", "justifiable decrease in the number of positions", or "other good and just cause." The Supreme Court of Indiana held in this case that the dismissal of permanent female teachers on account of marriage was not authorized by the provision which authorized dismissal for "other good and just cause." In denying the school trustees the authority to dismiss merely on account of marriage the court said:

If a teacher, after marriage, becomes inefficient, impaired in her usefulness, neglectful or otherwise incapable of performing her duties as a teacher in a proper manner, then good reason—"other good and just cause"—would exist for her dismissal; but marriage, in itself (in the absence of a statutory provision to the contrary), does not constitute a good and just cause (as provided in the teachers' tenure law) for the discharge of a teacher. Marriage as an institution involves no element of wrong, but, on the contrary, is protected, encouraged, and fostered by a sound public policy. The arbitrary determination of the school board that the marriage of women teachers (it is noted that the resolution of the school board attempted to operate against women only, and not against men teachers who married) was "good and just cause" for their removal is, as a matter of law, declared to be erroneous and invalid.

## MINNESOTA

*Backie* v. *Cromwell Consol. School Dist. No. 13:* 242 N.W. 389. April 1932

This is an action for recovery of salary by a woman teacher who was dismissed by reason of marriage. The teacher's contract stipulated that the teacher shall be subject to the rules and regulations of the board of education. Rule 13 of the school board provided that:

> Female teachers that are single when hired and married thereafter, their contract shall be in force only at the discretion of the board of education.

After her employment and before commencement of her term she married without knowledge of the rule above quoted. The statute provided for the dismissal of teachers "for cause."

In taking up this case the court said:

> We are not here concerned with the grounds or causes for which a teacher, holding the usual valid teacher's contract, may be discharged. We are here concerned with construing a contract as made so as to understand the language and the meaning and effect thereof.

The court in this case endeavored to emphasize the importance of construing the contract rather than passing upon the reasonableness of a school board rule. The court observed that while "there may be a wide difference of opinion as to the wisdom of the policy involved, the fact remains that the board has the duty and authority to establish a suitable policy, and it is apparent that, in the instant case, it exercised its discretion in good faith. We cannot say, as a matter of law, that rule No. 13 is unreasonable. It follows that it is valid." However, further in the case the court considered the reasonableness of rules and said:

> The test of the validity of rules and regulations of the board is their reasonableness. The rule which excused married pupils has been held unreasonable. *McLeod* v. *State*, 154 Miss. 468, 122 So. 737, 63 A.L.R. 1161 (1929).

Again the court said:

> The mere fact that she (the teacher) might be just as able to teach as well as before marriage is not controlling. . . . The board could legally discharge her by virtue of the power reserved by the terms of the contract.

Three judges dissented from the opinion rendered in this case. Justice Dibell in dissenting held that the rules and regulations referred to in the contract were to be regarded as applicable to her official duties. He said:

> It seems to me that the term "rules and regulations" in the connection used to the general subject of teaching and conduct of the school, and not to a rule which the board has chosen to make the nature of which is not more specifically stated and of which she does not have knowledge but which avoids her contract at the option of the board upon her marriage. I think there is no question of the validity of a provision in a contract. Such a provision was in the contract involved in *Ansorge* v. *City of Green Bay*, cited in the opinion. Whether a school board will employ a married woman as teacher is a question of policy; and what we have here is a construction of a contract.

Justice Holt and Justice Loring concurred with the dissenting opinion of Justice Dibell.

## III. RULINGS OF STATE ATTORNEYS GENERAL[8] AND STATE SCHOOL OFFICIALS

### INDIANA

Under date of March 20, 1929, the attorney general of Indiana wrote to the State superintendent of public instruction of that State as follows:

> I have before me your letter of March 13, 1929, asking four specific questions with reference to the teacher tenure law, approved March 8, 1927 (acts of 1927, chapter 97). . . . Your third question is as follows:
>
> "Would a regulation by a school board or township trustee not to employ married ladies as teachers, or that a teacher should not marry while she is teaching be interpreted as reasonable rule?"
>
> Replying specifically to the above question, it is my opinion that such a rule would be unreasonable as applied to teachers who had acquired rights under the teacher tenure statute.

### MARYLAND

In December 1931, the Maryland State Department of Education ruled that a woman teacher in the public schools

[8] The opinion of an attorney general of a State is an opinion only of that official. In the discharge of his usual functions the attorney general acts in an advisory and ministerial rather than a judicial capacity, his opinions being for the information of the officer for whom it is rendered (2 R.C.L. 920). Although the opinions of an attorney general have in no sense the weight or effect of a court decision (*Leddy* v. *Cornell* 52 Colo. 189), in actual practice they are usually followed until or unless overruled by the court. In this way his opinions often affect the rights of persons within his State and, with the exception of judgments and orders of courts, his opinions control public interests more largely than do the acts of any other State official (*State* v. *Burleigh County*, 19 N.D. 819, 124 N.W. 417).

of that State could not be dismissed from her position on account of marriage. This ruling also declared that a clause in a teachers' contract reading "If a female teacher married in any school year she will be expected to resign at the close of the school year" was in conflict with the State school law which provides no ground for discrimination on account of sex, nor does it differentiate between married and single teachers.

NEW JERSEY

In 1922, the commissioner of education of New Jersey held that a school board ruling providing for the elimination of female teachers on account of marriage was inoperative by reason of the teacher tenure law of that State. Below are excerpts from the decision of that State commissioner of education:

> The teachers' tenure law very definitely prohibits the dismissal of any teacher under tenure except for "inefficiency, incapacity, conduct unbecoming a teacher, or other just cause." No rule of a board of education can be effective if in contravention of a statute (sec. 120, art. VII, School Law) and it is therefore very obvious that in order for appellant's violation of respondent's rules to legally justify her dismissal, such violation must constitute the offenses described in the tenure law as justifying dismissal of a teacher.
>
> Plainly the violation by appellant of respondent's rule regarding marriage cannot in itself be considered inefficiency, incapacity, or conduct unbecoming a teacher, and cannot therefore be sufficient cause under the tenure law to justify her dismissal (*Clara Planer Nommensen* v. *Hoboken Board of Education*, New Jersey School Law Decisions of the Commissioner of Education and State Board of Education, 1928, p. 166).

NEW YORK

In 1916, the New York State Commissioner of Education upheld a school board ruling providing for the dismissal of married women teachers, not upon the reasonableness of the ruling, but upon the authority of a municipality to set up regulations in addition to those prescribed by the statute (*Conger* v. *Superintendent*, 8 State Department Reports 616, 1916).

Subsequent to the above ruling of the New York State Commissioner of Education the legislature enacted a teacher-tenure statute of State-wide application. In 1925, the State

commissioner of education of New York was again called upon to rule on the subject of dismissal on account of marriage. He then said:

> It seems clear to me, however, that to declare [by] either a legislative act or an administrative rule that the marriage of a teacher unfits her for the public-school service would be opposed to existing public policy and would be an unfair discrimination against married women. If a married woman possesses the required qualifications and performs her duties with the same degree of competency and efficiency as an unmarried woman it would not only be unjust but I think illegal to discriminate against her because of her marriage (33 State Department Reports 12, 1925).

## NORTH DAKOTA

The State board of administration of North Dakota has ruled that no married woman shall be employed on the faculties of the State university, the State agricultural college, and the State normal schools. This rule was made effective September 1, 1931.

## WASHINGTON

Under date of December 3, 1931, the assistant attorney general of Washington wrote to a teacher in that State as follows:

> . . . You have submitted a clause which you state is contained in teachers' contracts in the Tacoma district, which clause is as follows:
>
> "Married women. No married woman in addition to those in the regular employ of the Tacoma schools prior to May 9, 1929, shall be elected to regular positions in the Tacoma schools unless entirely self-supporting. Any woman elected or reelected after said date who marries shall thereby automatically forfeit her position."
>
> You further state that you have been employed in the Tacoma district for 13 years and have been married 10 years of that time and desire to continue teaching. You inquire whether or not the Tacoma board can now dismiss you from the service.
>
> It seems to me that under the clause of the contract above set forth, you are fully protected because the prohibition against the employment of married teachers does not apply to those who were teaching prior to May 9, 1929. Since you state that you have been employed in the Tacoma district for 13 years, you evidently were employed prior to May 9, 1929, and, since you have been married 10 years of the 13, I take it that you were also married prior to May 9, 1929.
>
> Speaking generally, I believe that a school district would have the right to contract with whomever it pleases. A district, therefore, could hire or refuse to hire married women teachers as the board of directors sees fit. On that basis, I believe the prohibition contained in

the first sentence of the quoted clause is valid and would be sustained by the courts. The second sentence of the quoted clause appears to me to present an entirely different question. It has to do with the discharging of teachers who marry after they are employed and not with the question of the right of a school district to contract with whom it pleases. The provision is to the effect that a woman teacher who marries during the term of her contract shall thereby automatically forfeit her position. Clauses in teachers' contracts similar to this have been held to be void and unenforcible as against sound public policy, especially where the statutes authorize school directors to dismiss teachers only for cause. Section 4776 (Rem. Comp. Stat.), empowers boards of directors to employ and "for sufficient cause" to discharge teachers. In determining the validity of a clause such as contained in the Tacoma contract, two questions would arise: (1) Whether or not subsequent marriage of a woman teacher would constitute "sufficient cause" for dismissal, and (2) if not, would the fact that a teacher has entered into a contract with such a clause embodied therein stop her from contesting the right of the district to dismiss her.

Both of these questions were considered at length by the Supreme Court of Oregon in *Richards* v. *District*, 78 Oreg. 621, 153 Pac. 482. There it appears that a school district entered into a contract with an unmarried woman teacher, which contract specifically provided "all women teachers who marry while in the service of the district thereby terminate their service with the district." A statute of the State of Oregon similar to section 4776 authorized school boards to dismiss teachers "only for good cause shown." Answering the first question, the court said that the marriage of a teacher "does not involve a single element of wrong but, on the contrary, marriage is not only protected by both the written and unwritten law but it is also fostered by a sound public policy." The court accordingly stated that the marriage of a woman school teacher did not constitute good cause for dismissal within the meaning of the statute. It was argued, however, that, since the teacher had voluntarily signed the contract with the stipulation against marriage in it, she was bound thereby. On this point the court said:

"The board cannot dismiss at all for an unreasonable cause. . . . Keeping in mind the purpose for which the statute was enacted, the board cannot by contract enlarge a power which is limited and restricted by the very law that creates the power. The board cannot do indirectly that which it is prohibited from doing directly."

I have perhaps gone into this question at greater length than is necessary so far as your own particular case is concerned, but the question seems to be one which is creating considerable difficulty in many districts at this time. From the foregoing analysis, it is my opinion that the first part of the quoted clause is valid and that the Tacoma School Board would have the power to refuse to hire married women teachers, but that the second part of the quoted clause is invalid and that any teacher who was employed while unmarried and thereafter

LEWIS, E. E. Personnel problems of the teaching staff. New York, The Century Co., 1925. The problem of the married woman teacher, p. 173–189.

Contains summaries of 31 arguments for and 31 arguments against the employment of married women teachers. The author says: "It all depends upon the woman. Individual merit, and merit only, should determine the status of married women teachers. . . . The tendency seems to be away from the hackneyed arguments of confining a married woman's activities to her home, and to base her employment or dismissal on personal efficiency rather than on extra professional duties or pleasures which she may follow. Obviously, no general rule will cover all the cases. . . . There is no way to catalog women solely on their marital condition. Efficiency depends on many factors. The school board should give to the pupil the best teachers possible."

MCGINNIS, W. C. The married woman teacher. School Executives Magazine, 50: 451–453, June 1931.

Reports that 231 superintendents of cities of 25,000 population responded to the question: "Judging from your experience, is a policy of displacing women teachers of successful experience in the local schools, when they marry, a good administrative policy?" Fifty-two percent answered this question "No", 39 percent answered "Yes." Sixty-two percent of 208 superintendents reported that discrimination against married women teachers was, in their opinion, due primarily to surplus of teachers and business depression; 29 percent reported discrimination due primarily to political pressure; and 22 percent reported discrimination was for the welfare of school. Sixty-seven percent of superintendents reported it the policy of their boards not to elect married women. This study also reported that 142 professors of education responded to the question: "In your opinion, is the policy of boards of education to discriminate against married teachers a sound educational policy?" Eighty-six percent answered this question "No", and 12 percent answered "Yes." Furthermore, 75 percent of the professors stated that, other things being equal, marriage did not tend to render the educational service of a woman less valuable to the schools, and 79 percent of them stated that the surplus of teachers and the business depression did not justify a policy of discrimination against married women teachers on the ground that it was a benefit to society as a whole.

TRUSLER, H. R. Essentials of school law (see Causes for dismissal of teachers, p. 195–213). Milwaukee, Wis., The Bruce Publishing Co., 1927.

Contains a general discussion of the principal common law rules governing the dismissal of teachers in general, including those rules and principles governing dismissal on account of marriage or maternity.

WOODHOUSE, CHASE GOING. May married women teach? Journal of American Association of University Women. April 1932, p. 140–145.

A review of the legal and economic status of the married woman teacher. References are made to a number of earlier studies.

WOTRING, CLAYTON W. The legal status of married women teachers in the public schools of the United States as determined by judicial decisions and legal opinions. Doctor's thesis. New York, N.Y., New York University, 1932. 101 p.

Contains data on number of married women teachers and brief account of related studies. Reviews opinions of State supreme courts and certain State attorneys general; also reviews the status of married women teachers in England and France.

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